

Chapter 7

SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

7.1 Introduction:

The disproportionate rate of minority confinement in detention centers, correctional facilities, jails and prisons has raised serious questions and concerns throughout the United States and the Commonwealth of Kentucky. The reasons for this situation are complex and multifaceted in nature. The goal of this study was to examine the juvenile justice process and decision-making points so as to ascertain where in the process possible bias can occur resulting in disproportionate minority confinement. Given the complex and multifaceted nature of the issue, the study also inquired into the perceptions and knowledge of personnel working in the juvenile justice system about possible causes of DMC including specific social conditions that can explain overrepresentation of minority juveniles in the juvenile justice system in Kentucky. Four research questions were posed:

1. What are the major decision-making points in the juvenile justice process where discretion is used and the possible effect of this on minority overrepresentation?
2. What is the effect of existing programs, policies, and procedures on levels of minority overrepresentation?
3. What are the perceptions and knowledge of the professional staff in the Administrative Office of the Courts, Court Designated Worker Program, Juvenile Justice personnel, and juveniles within the system, about the causes, seriousness, and pervasiveness of minority overrepresentation?
4. What are the characteristics of counties where minority overrepresentation appears to be more serious?

In order to answer these very important questions the study adopted a triangulation of methods that included: (i) quantitative analysis of statewide data by individual and county levels at various decision making stages in the juvenile justice system; (ii) the conduct of semi-structured interviews with personnel from the juvenile justice system in five counties (Jefferson, Fayette, Mason, Grayson and Christian); (iii) the analysis of a focus group meeting with juveniles within the justice system; and (iv) document reviews of

other state reports; and (v) document review of administrative forms and manuals used in the juvenile justice system in Kentucky.

The findings of the study have important implications for understanding disproportionate minority confinement in the juvenile justice system in Kentucky and people's perceptions and knowledge of the seriousness, pervasiveness and causes of DMC. The major findings as they relate to the research questions are reviewed below.

7.2 Qualitative Findings

There are variations in the interpretation and implementation of policies, laws and guidelines by county and job category.

Overall, the study found that while there are consistent policies, laws and guidelines for the juvenile justice system in the state of Kentucky, there are variations in how these are interpreted and implemented in rural and urban counties. From the interviews it was suggested that in rural counties procedures and decisions are more informal and conducted on a one-to-one basis. Within this context, personal knowledge or knowledge about a juvenile's family background is a "useful" consideration. Many of the respondents from the rural counties denied that race (and other social and economic characteristics) are important, nor do they believe race to be a significant issue in their community. Defense attorneys from these counties were not all in agreement with this view.

In the urban counties, respondents suggested that personnel within the system often follow as closely as possible the official (state and county specific, written or understood) guidelines, laws and policies. However, since individuals make decisions, and since the values of these individuals are influenced by the biases of society, the possibility does exist that decisions can be made that are discriminatory.

There are points of discretion at every decision-making stage in the juvenile justice process where bias can occur.

The decision-making points in the juvenile justice system can be categorized into three main stages: intake, processing, and disposition. At each of these three major

decision-making points there are areas where discretion is used in making decisions. At the Intake stage discretion is used in (i) whether to file a complaint; (ii) whether to detain a juvenile before arraignment; (iii) whether to detain a juvenile after arraignment; and (iv) if the juvenile qualifies for diversion, what are the terms of diversion. At the next stage, Processing, there are approximately ten areas where discretion is used. These include: (i) whether to override diversion eligibility; (ii) whether to pursue charges formally; (iii) whether to transfer the case to adult court; (iv) whether to dismiss the case or not; (v) whether to offer informal adjustment; (vi) if offered informal adjustment, what are the terms; (vii) whether to offer a plea bargain; (viii) if a plea bargain is offered, what are the terms; (ix) whether to prosecute, and (x) whether the juvenile should be adjudicated delinquent. In the final stage, Disposition, there are three important areas where discretion is used: (i) whether to commit the juvenile to DJJ; (ii) the length of confinement; and (iii) type of placement.

In total there are at least seventeen areas where discretion is used throughout the juvenile justice system. Most of the respondents believe that the ability to use discretion in the process is generally good because it allows for treatment of cases on a one-to-one basis so that the individual juvenile's specific issues and needs can be addressed. On the other hand, respondents were aware that discretion also allows for individual biases to influence case outcomes and contribute to the overrepresentation of minorities in the juvenile justice system. All personnel involved with the juvenile justice system use discretion. These include law enforcement officers, court designated workers, prosecuting attorneys, defense attorneys, judges and juvenile justice workers/specialists. In addition school officials and members of the public also use discretion in filing a complaint.

Change in policy or policy focus, and/or targeting of specific groups can result in DMC.

Some respondents suggested that certain changes in policies and resources could also result in DMC. In particular, respondents mentioned the recent emphasis and monies placed in drug enforcement as having a greater effect on African Americans. This is not because more African-Americans are involved in drugs but because African-American communities -- and black juveniles in particular -- have been the targets of this program.

The effect has been so great that the war on crack cocaine has been described as the war on black males.

Another change in policy/law that was cited as influencing DMC is the law that requires all juveniles who engage in an offense with the use of a gun should be tried in adult court. Many respondents believe that black juveniles are more likely to engage in violent offenses and carry weapons (guns). If this perception persists then the new policy could result in more cases of black juveniles tried in adult courts.

One respondent felt that a program in Jefferson County that was designed to monitor informal adjustments might have an adverse impact upon minority youth because of higher recidivism rates. It was suggested that efforts should be made to develop another such prevention effort.

There were mixed perceptions about the seriousness of DMC by county and job category.

Two very different viewpoints were expressed concerning the seriousness of DMC in the different counties that were studied. While many respondents were concerned about DMC others did not see DMC as a problem in the juvenile justice process nor did they see race/ethnicity as a problematic issue in their particular county. The disparity in perceptions was clearly demarcated by the location and demography of the counties.

The general view expressed in the rural counties where the population is almost completely white is that problems related to minorities are simply not an issue. In the rural counties the juvenile justice system respondents were either exclusively or predominantly white and believe they are being equitable and fair in their dealings and views of minorities.

In the urban counties respondents were of two views. One group of respondents believed that DMC was not a serious issue in the counties where they worked but recognized that a large percentage of juveniles in the justice system were minorities, African American in particular. In contrast, a second group of respondents suggested that in the two major urban counties (Fayette and Jefferson) there are a disproportionate number of black juveniles in the justice system and that DMC was a real concern.

Pervasiveness of DMC was viewed as taking place mainly in urban counties and at the intake/arrest stage of the juvenile justice process.

Perceptions about the pervasiveness of DMC varied significantly by rural/urban counties and job categories. Many of the rural respondents, most of the law enforcement officers, and some court-designated workers (rural and urban) were less likely to see and talk about DMC. In contrast, some urban respondents and defense attorneys (rural and urban) openly expressed their observations and perceptions about DMC.

Respondents from rural counties expressed the view that DMC was not a problem in their county because of the demographic make up of their population (predominantly white) and because of a certain rural culture that did not foster high rates of juvenile delinquency. However, concerns about families migrating from urban centers to rural communities and the effects of such an influx on juvenile delinquency were raised.

Urban respondents offered two opposing viewpoints. One group expressed the view that racial bias and other forms of discrimination affect the juvenile before he or she enters the juvenile court system. They suggest that bias most likely occurs at the intake/arrest stage of the juvenile justice process and that once the juvenile reaches the court system all juveniles are treated equally. These respondents firmly believe that the type of offense committed is the main determining factor in the way a juvenile is treated, processed and on their court outcome. The other group of urban respondents disagreed with this viewpoint and suggested that racial bias also takes place after the intake/arrest stage, and gave examples to show where black and white juveniles were treated differently and had different court outcomes for the same type of offense. Conference Hearing/Plea Bargaining and Defense/Prosecution of the juvenile were two other stages identified where racial bias is believed to occur.

The legal history of a juvenile was identified as the main factor influencing the processing and court outcome of a juvenile. While respondents suggested that in general social and economic characteristics were not influencing factors, family/community background and resources, dress and general demeanor, and race/ethnicity were cited as characteristics that can affect treatment, processing and court outcomes.

The perception of respondents from small, predominantly white rural counties was that the juvenile's family background, reputation and resources are important.

Family name and reputation were cited by many of the rural respondents as a factor that while not officially considered, was something that can be “useful to know” because it allowed them to help the juvenile get the attention/services they need if it is not available at home. Consideration of family background is viewed as helpful rather than prejudicial and biased. The respondents from the rural counties did not see race/ethnicity and dress/general demeanor as having any effect on how juveniles are perceived, treated and processed in the juvenile justice system.

The urban respondents suggested that family background did not influence the way a juvenile is treated, processed or in his/her court outcome. However, some respondents did link family and community economic background to race/ethnicity and court outcomes. For example, the assumption was made that since black juveniles are more likely to come from poor families and neighborhoods, they are more likely to lack the support and resources needed to successfully complete diversions, and therefore are more likely to be given confinement. Mixed views were also expressed about the importance of a juvenile’s dress and general demeanor and the way that they are treated and processed, and on the decisions made on their cases. While most respondents reported that dress and general demeanor of the juvenile has no effect, some suggested that it does at the intake/arrest stage and in court appearances before judges. Law enforcement officers and judges denied these allegations.

Personnel in the juvenile justice system identified six possible causes for DMC in Kentucky. These include: (i) racial profiling; (ii) difference in types of offenses committed by black and white juveniles; (iii) weaknesses in minority families; (iv) the link between economic inequality, poverty, race and juvenile delinquency; (v) rubber stamping police recommendations; and (vi) change/focus of new policies.

Most of the respondents (except law enforcement officers) identified the intake/arrest stage of the process as the most susceptible stage where racial profiling can occur. Additionally, at the conference hearings/plea bargaining stage both prosecutors and defense attorneys can be swayed by the bias testimonies and emotions of law enforcement officers and witnesses. It was suggested that racial profiling that links the economic characteristics of family/community background to the race/ethnicity of a

juvenile in the defense/prosecution of a juvenile can have a negative effect for black juveniles and a positive effect for white juveniles.

It was strongly suggested by many of the juvenile justice respondents (both rural and urban based) that DMC could be explained by linking the type of charge to the race/ethnicity of the juvenile and the composition of his or her neighborhood (i.e. black neighborhoods). For example it was suggested that black juveniles were more likely to get involved with crack cocaine and marijuana, commit more serious/violent offenses, and commit crimes involving weapons (guns). In contrast there were respondents that did not agree with this theory and attributed DMC to the targeting of black juveniles and black communities.

Many respondents were of the view that a greater number of minority families are dysfunctional and that the juveniles from these families do not respect authority and discipline. As a result, a greater number of black juveniles have unsuccessful diversion and informal adjustment outcomes. Single-parent households, lack of a male presence, and having criminal family histories were identified as characteristics typical of black families and which have a negative influence on black juveniles. Other respondents opposed this perspective and argued that in the past, single mothers have raised black families without producing delinquent children. It was also argued that the current trend in racial profiling is increasing the number of black families with criminal histories.

Almost all the respondents associated economic inequality and poverty to race/ethnicity and DMC. It was suggested that because black juveniles are more likely to live in poor families and communities they were more likely to be drawn into a life of crime. Some suggested that the lack of resources available to black juveniles also forced them to engage in more open transactions when committing offenses. Lack of resources was also linked to explanations for why black juveniles were more likely not to succeed in diversions and informal adjustments and more likely to be committed. Other respondents disagreed with the economic-race arguments and suggested that it was more a case of profiling and targeting of poor black communities and juveniles that gave rise to DMC.

Respondents suggested that while most personnel working in the juvenile justice system were hardworking and dedicated to their jobs there are times when personnel are

swayed towards rubber-stamping law enforcement charges, testimonies and recommendations without proper investigation. Since the intake/arrest stage has been identified as the stage most susceptible to racial profiling, rubber-stamping can contribute to DMC. The effect of changes/focus of new policies on DMC was discussed earlier in this chapter.

Juveniles within the system have positive perceptions about the juvenile justice system but expressed negative perceptions and experiences with personnel working in the juvenile justice system.

Juveniles within the system identified three distinct functions of the juvenile justice system: (i) to assist them in receiving treatment that they need, (ii) to protect the community and the juvenile by keeping the juvenile off the streets and away from crime, and (iii) to discourage juveniles from committing offenses through some type of discipline. Although the juveniles had positive perceptions about the system they suggested that the process did not allow them to speak and explain why they committed certain offenses or to defend themselves against accusations/complaints. The juveniles were also critical of juvenile justice personnel (law enforcement officers, CDWs, attorneys, judges, DJJ workers) with whom they interacted. They claimed that juvenile justice personnel do not act in the interest of juveniles and are not there to assist them. They were distrusting of the juvenile justice personnel and were adamant that juveniles had little rights and furthermore nobody in the system explains their rights to them.

7.3 Quantitative Findings

There are racial differences in the three stages of the system: Intake, Processing and Disposition in both rural and urban counties.

While race was not seen as an issue for concern in rural counties, and officials in rural counties and some in urban counties denied the existence of DMC, an examination of statewide data showed that in some rural and urban counties:

1. Black youth are more likely to have complaints filed compared to white youth. These racial differences do not have an urban or rural bias but are spread through out Kentucky counties.
2. There are racial differences in the number of black youth eligible for diversion.
3. There are racial differences in the number of black youth detained before court hearings.
4. Among juveniles who were eligible for diversions, there are racial differences for black youth under the age of 14.
5. There are racial differences for black youth in the 16-17-age range in terms of eligibility for diversion and in successful diversions.
6. There are racial differences in type of offense that vary largely between rural and urban location. These differences result in more felony charges for black youth in rural areas and more misdemeanor charges in urban areas.
7. There are racial differences in the type of charge. Black youth are more likely to be charged with drug offenses compared to other offenses.
8. There are racial differences in DJJ placement. Black youth are less likely to be placed at home, less likely to be placed in treatment centers, and more likely to be placed in secure detention.
9. There are gender differences in DJJ placement. Female youth are less likely to be placed at home and more likely to be placed in detention.
10. No clear patterns of the characteristics of counties could be discovered. In many instances the percent black, change in the percent black, and the percent of female-headed households were found to be important contexts for racial differences.

7.4 Conclusions

The conclusions offered in this study are based upon the synthesis of both the qualitative and quantitative findings. They are discussed in this section in relation to the four research questions of the study.

First, at all stages of the juvenile justice process there are decision-making points where discretion is used and where bias can occur. Most of the personnel interviewed

agreed that the policies and guidelines of the system are designed to protect against bias. Particular attention should be directed toward the policies, procedures that guide the areas where discretion is used at the various decision-making points. This is particularly important since the study also found that there are variations in the implementation and interpretation of the policies and guidelines in rural and urban counties.

Second, while most of the policies and guidelines of the juvenile justice system are designed to protect against bias, the focus of certain policies (e.g. war on drugs, the new gun law) can have a negative effect on minorities. On the other hand, the lack of certain policies (e.g. monitoring of informals) can also have a negative effect on minorities and juveniles in general.

Third, the perceptions and knowledge of personnel within the juvenile justice system on seriousness, pervasiveness and causes varied by county and job category. In general, overrepresentation of minorities in the juvenile justice system was not directly linked to race/ethnicity but was associated with other social and economic characteristics that were believed to be strongly associated with minority families and communities.

Fourth, racial differences were found at different stages in the juvenile justice process but the level and magnitude of difference varied by county. The racial differences emerge from a complex mix of factors involving rural and urban differences, population composition, and may be related to social and economic issues.

Fifth, the study concludes that the most important short-term need to address minority overrepresentation is better and more consistent data. Many of the data items requested by the study were not furnished and it is not clear exactly what is available. Better data is needed on social and economic characteristics of the juvenile population committed to DJJ, as well as better information on current and prior legal history of the juvenile. Also, more information is needed on youth whose cases are dismissed and youth who receive informal adjustments.

7.5 Recommendations

Future Research

- (i) Conduct a comprehensive statewide survey to determine the perceptions and knowledge of all personnel in the juvenile justice system. The survey focus should include gathering data on perceptions about the seriousness, pervasiveness, and possible causes of DMC, as well as the level of cultural awareness.
- (ii) Conduct focus group meetings with juveniles to determine their perceptions and knowledge of whether disparity exists in the treatment and processing of juveniles. Participants should include juveniles from inside and outside of the juvenile justice system.
- (iii) Conduct statewide analysis of all decision-making levels of the juvenile justice system.
- (iv) Conduct further research that examines arrest records by race, gender, family background and county.
- (v) Conduct further research on possible overrepresentation of minorities in the filing of complaints and pre-trial detention.
- (vi) Conduct further research on possible under-representation of minorities eligible for diversion and committed to treatment programs.
- (vii) Conduct further research into the characteristics of counties with over-represented minorities.
- (viii) Conduct further research into the legal history of the juvenile, source of complaints, dismissals, informal adjustments and waivers to adult courts by county, race, and other social and economic characteristics.
- (ix) Conduct further investigation on ways in which social and economic information about the juvenile and his/her family can be collected and analyzed.
- (x) Conduct further investigation on criteria for decision-making contained in legislative statutes governing juvenile justice.

Policy, Programs and Procedures

- (i) Develop a program for juvenile justice personnel to receive increased cultural awareness training on a regular and on-going basis. This training is especially

important for personnel who interact regularly with minority juveniles and their families, and personnel who previously worked in predominantly white rural counties and now work in urban counties or counties where there are large minority populations. Training efforts should include content that will increase understanding of the characteristics, culture and needs of minority juveniles and families. It should also address issues of racial (as well as gender and social class) stereotyping of minority juveniles, families and communities and the implications associated with this. Issues associated with the intersection of race, class and gender and rural/urban differences and similarities should also be explored.

- (ii) The Department of Juvenile Justice should form a task force for the implementation of special cultural awareness programs for law enforcement officers who work with juveniles in minority-based communities and/or in schools.
- (iii) Develop and implement training programs for juvenile justice personnel to ensure that they are knowledgeable of the communities, cultures and resources of the juveniles in their jurisdiction.
- (iv) Increase efforts to ensure that personnel employed in the juvenile justice system reflect proportionally the juvenile population in their jurisdiction. This will assist in cultural awareness among juvenile justice personnel as well as provide effective role modeling and mentoring to minority juveniles. As far as possible, employment of personnel from minority communities or personnel who are familiar with minority communities will also enhance effective processing and decision-making on minority cases.
- (v) Supervisors should be encouraged to more closely monitor personnel for adherence to policies, procedures and decision-making criteria. This would allow for the continued use of discretion in the interest of individual juveniles and at the same time reduce discriminatory use of discretion where it exists.
- (vi) Develop more on-going community-based prevention programs that can better serve the minority juvenile population. Effective community-based prevention efforts that consider and understand the needs of minority juveniles and families will assist in reducing the number of minority juveniles entering the justice system. Additionally, culturally relevant neighborhood school-based prevention programs are needed. Other suggested programs include parent education, parent training and after school programs. The Juvenile Justice Prevention Council should be involved in designing and implementing these early intervention programs. Special attention should be given to minority juveniles who are under the age of 14 years.

- (vii) Develop a program that will better meet the specific needs of juveniles who receive informal adjustments. This should include needs assessments, monitoring and evaluation.
- (viii) Develop more community-based treatment programs in areas with high concentration of minorities. It was suggested that lack of resources (e.g. means of transportation) often affects the ability of minority juveniles to successfully complete their diversion terms and consequently they end up returning to the system. An increase in the number of community-based programs designed to meet the needs of minority juveniles and their families can reduce DMC. The community-based treatment programs should be directed to serve specific needs and staffed by well-trained professional and culturally aware personnel that reflect the racial/ethnic composition of the community.
- (ix) Develop mechanisms for closer collaboration between schools, community-based organizations and the juvenile justice system. This type of collaboration is important for early detection of juveniles with special needs so that they can be enrolled in prevention programs and given the guidance that is required to prevent them from entering the juvenile justice system.
- (x) Develop more programs as alternatives to detention.
- (xi) Develop more programs for juveniles that will educate them about their legal rights as juveniles and the impact of changes in policies, laws, programs and procedures on their rights.